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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's	:	PR Docket No. 93-35
Rules to Provide for Channel	:	RM-7986
Exclusivity to Qualified	:	
Private Paging Systems at	:	
929-930 MHz	:	

To the Commission:

REPLY COMMENTS OF BELLSOUTH CORPORATION

BellSouth Corporation ("BellSouth") and its subsidiary, Mobile Communications Corporation of America ("MobileComm"),¹ by its attorneys, herewith submit reply comments in the above-captioned proceeding.² The comments fail to allay the need to answer vital public interest questions relating to exclusivity in the 929-930 MHz band, thereby leaving the record without the necessary underpinning for the Commission's proposal. To the contrary, comments positively manifest a need for the Commission to address questions of equity and fairness facing all paging providers, RCCs and PCPs alike.

¹MobileComm is a provider of both Radio Common Carrier ("RCC") and Private Carrier Paging ("PCP") services.

²In the Matter of Amendment to the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz ("NPRM"), PR Docket No. 93-35, RM-7986, released March 31, 1993.

The Association for Private Carrier Paging of the National Association of Business and Educational Radio, Inc. ("NABER") has sought, through a petition for rule making, channel exclusivity for PCPs meeting certain criteria. The Commission, agreeing with the merits of the proposal, with certain exceptions, thus issued an NPRM seeking public comment on its intended amendment to the Rules.

Some twenty parties have submitted comments, including BellSouth.

THERE IS NO JUSTIFIABLE BASIS UPON WHICH THE COMMISSION MAY, IN THE PUBLIC INTEREST, AWARD EXCLUSIVE USE OF THE 929-930 MHZ BAND TO PCP PROVIDERS

NABER, the original moving party in this proceeding, reiterates its proposition that "final adoption of this item will provide spectrum efficiency and marketplace competition."³ However, it offers no further reason, other than this bald assertion, that PCP channel exclusivity is in the public interest, and, therefore, appropriate. As BellSouth pointed out in its Comments, there is no substantial evidence that the Commission's proposal will advance spectrum efficiency, or that, in fact, it will

³NABER Comments, at 16. NABER, while pleased with the Commission's proposal in general, offers further suggestions and changes, all under the assumption that channel exclusivity for PCPs will be adopted.

increase competition.⁴ No party has offered evidence for the record to the contrary.

No one can seriously argue that, at present, PCP channels are anything but marginally utilized.⁵ However, it is overcrowding which, according to the Commission, offers the potential for spectrum inefficiencies.⁶ The Commission and some parties have made vague references to future congestion; but none have addressed the issue specifically, by offering capacity projections or other studies. In addition, as BellSouth pointed out in its Comments, transmission speeds are likely to increase substantially. If so, capacity on the PCP channels may very well quadruple.⁷ On the other hand, tying up the 929-930 MHz band with a few exclusive providers may actually contribute to and exacerbate overcrowding on the lower paging channels, which are operated on a shared (non-exclusive) basis. It is, therefore, not at all clear, and certainly not supported by the present record, that the Commission's proposal will lead to greater spectrum efficiency.

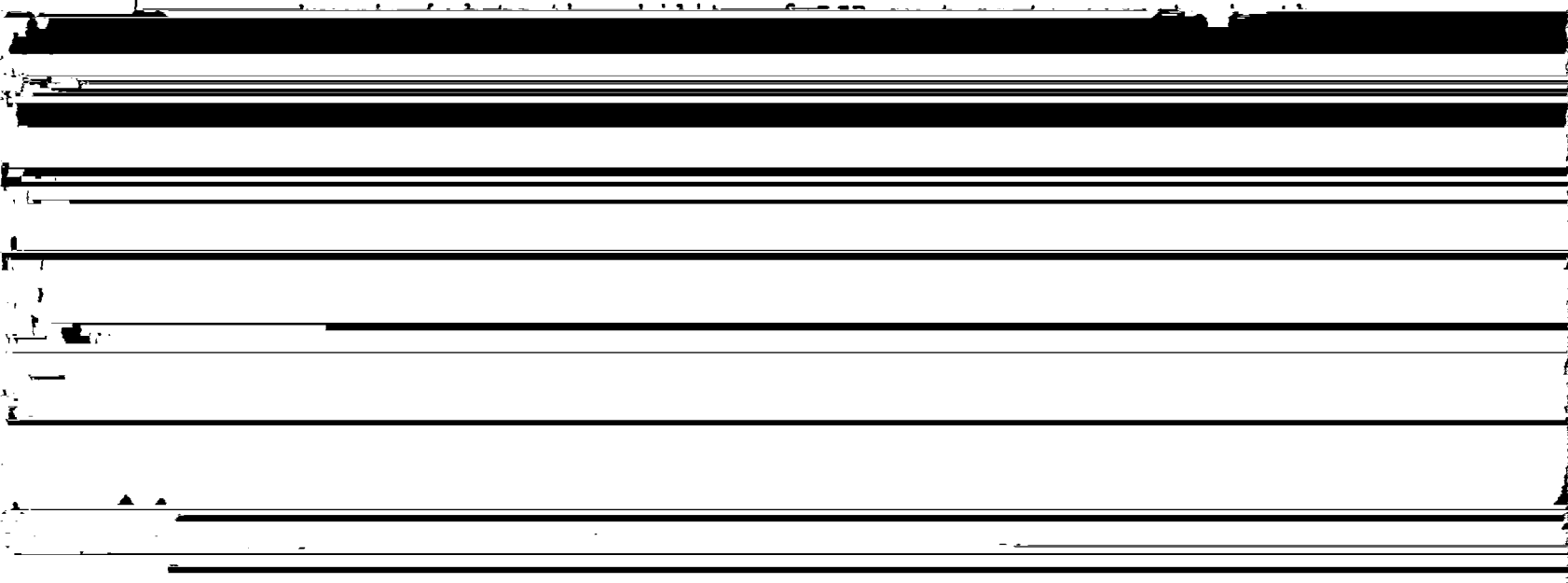
Nor is there any evidence of record that channel

this and other proceedings⁸ has stated its goal to be head-to-head competition between PCPs and RCCs, as well as vigorous competition in the paging market in general. Its policies, however, will have the opposite effect: exclusivity will actually make it less likely that potential providers will obtain licenses in the 929-930 MHz band. Perhaps more importantly, the Commission's relentless and legally suspect efforts administratively to make PCPs and RCCs indistinguishable from a service point of view, will place RCCs at a competitive disadvantage, thus, in fact, lessening competition in the paging marketplace.

The public's interest and, therefore, public policy, are not shown to be served in the present record by the Commission's proposal, and such should be rejected.

THE UNEQUAL APPLICATION OF REGULATORY BURDENS UPON COMMON CARRIER PAGING OPERATIONS BY THIS AND OTHER PROPOSALS IS INEQUITABLE AND IS A PRODUCT OF UNREASONED DECISION MAKING.

As stated above, the Commission's goal is to eliminate any and all functional differences between private and common carrier paging providers so as to remove "unnecessary



questionable from a statutory standpoint, as various parties have pointed out in this proceeding.¹⁰ However, from a factual standpoint, alone, it is unreasonable for the Commission not to consider the competitive disadvantages to common carriers resulting from the Commission's piecemeal policy determinations bestowing competitive advantages on private carriers--this proceeding included. While PCPs are administratively freed-up to more fully compete, common carriers are still subject: to the costs of state entry, service and rate regulation; to state utility taxes; to Title II of the Communications Act requiring reasonable rates and nondiscrimination; to varying power requirements, annual reporting requirements, and ownership restrictions; and to forfeiture and monetary penalties, which, if imposed, are greater than those for PCPs. All of these impediments affect common carrier paging operators' cost of business and marketing efforts. However, while these burdens persist,

¹⁰For example, Radiofone, Inc. in its Comments argues that "[a]s a result of a series of Commission decisions over the past 15 years, permissible operations of most common carrier paging licensees and private carrier paging licensees...are very similar.... [Comments at 3] [T]he Commission [in this proceeding] is proposing to take the last step to remove any functional distinction between the two services...." [Comments at 13] By giving PCPs a competitive advantage, the paging market would be channeled to PCP, preparing "the way for the complete elimination of any state role in the regulation of intrastate radio common carriage [in paging] [by virtue of Section 331 of the Communications Act, 47 U.S.C. § 332]. Yet, such a result would...violate the congressional intent to establish a system of dual regulatory control." [citing California v. FCC, 798 F.2d 1515, 1519 (D. C. Cir. 1986)]."

there is no quid pro quo left to counterbalance these common carrier regulatory burdens. In the past, private carrier paging systems operated on a small scale for specialized needs. They no longer do so today. They are full competitors in the paging marketplace. Without any counterbalance to common carrier regulatory baggage, there is no justification for common carrier paging operators to continue to remain subject to many of the extant regulatory restraints with which they must now comply.

The Commission must not make policy changes piecemeal; it must look instead at all the relevant factors; and it must treat similarly situated licensees in the same manner.¹¹ Otherwise, its actions are unreasonable. Greater Boston Television Corp. v. FCC, 444 F.2d 841 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971).

¹¹Melody Music, Inc. v. FCC, 345 F.2d 730, 733 (D.C. Cir. 1965).

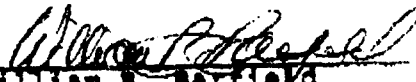
CONCLUSION

For the above-stated reasons, the Commission should reconsider its proposed amendments in this proceeding and reject them, or, in the least, consider the effect of such proposals on the competitiveness of all paging providers, PCPs and RCCs alike.

Respectfully submitted,

BELLSOUTH CORPORATION
MOBILE COMMUNICATIONS CORPORATION
OF AMERICA

By:


William B. Barfield
Jim O. Llewellyn
Suite 1800
1155 Peachtree Street, N.E.
Atlanta, GA 30367-6000
(404) 249-2641

Charles P. Featherstun
David G. Richards
BellSouth D.C., Inc.
Suite 900
1133 21st Street, N.W.
Washington, D.C. 20036
(202) 463-4132

Their Attorneys

Of Counsel:

Fred J. McCallum
Vice President and General Counsel
Mobile Communications Corporation of America
1800 East County Line Road
Suite 300
Ridgeland, MS 39157
(601) 977-1636

May 21, 1993

CERTIFICATE OF SERVICE

I, Evelyn T. Craig, do hereby certify on this 21st day of May, 1993, that I have caused a copy of the foregoing Reply Comments of BellSouth Corporation to be served, via first class United States mail, postage prepaid, to the persons named on the attached service list.


Evelyn T. Craig

SERVICE LIST
PR DOCKET NO. 93-35
RM-7986

ASSOCIATION FOR PRIVATE
CARRIER PAGING
David E. Weisman
Alan S. Tilles
Terry J. Romine
Meyer, Faller, Weisman
and Rosenberg, P.C.
4400 Jenifer St., N.W.
Suite 380
Washington, D.C. 20015

Jai Bhagat
MOBILE TELECOMMUNICATION
TECHNOLOGIES CORPORATION
200 South Lamar Street
Security Center Building So.
Suite 900
Jackson, MS 39201

Mark A. Stachiw
PACTEL PAGING
Suite 800
12221 Merit Drive
Dallas, TX 75251

PAGEMART, INC.
Phillip L. Spector
Susan E. Ryan
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
1615 L St., N.W., Suite 1300
Washington, D.C. 20036

Carl W. Northrop
BRYAN CAVE
Suite 700
700 13th St., N.W.
Washington, D.C. 20005

PAGING NETWORK, INC.
Judith St. Ledger-Roty
Kathleen A. Kirby
REED SMITH SHAW & McCLAY
1200 18th St., N.W.
Washington, D.C. 20036

Raymond J. Kimball
METAGRAM AMERICA INC.
Ross & Hardies
888 16th St., NW
Washington, D.C. 20006

Thomas A. Stroup
Mark Golden
TELOCATOR
1019 19th St., NW
Suite 1100
Washington, D.C. 20036

AMERICAN PAGING, INC.
George Y. Wheeler
KOTEEN & NAFTALIN
1150 Connecticut Ave., N.W.
Suite 1000
Washington, D.C. 20036

THOMAS W. LUCZAK
Robert H. Schwaninger, Jr.
Brown and Schwaninger
1835 K St., N.W., Suite 650
Washington, D.C. 20006

RADIOFONE, INC.
Ashton R. Hardy
Hardy & Carey
111 Veterans Blvd.
Suite 255
Metairie, LA 70005

MAP MOBILE COMMUNICATIONS, INC.
Garry Morrison, President
840 Greenbrier Circle, Suite 20
Chesapeake, VA 23320

THE PAGING DIVISION OF
MCCAW CELLULAR COMMUNICATIONS, INC.
David C. Jatlow
Young & Jatlow
2300 N St., N.W., Suite 600
Washington, D.C. 20037

MESSAGE CENTER BEEPERS, INC.
BEEPAGE, INC.
Lawrence M. Miller
Steven C. Schaffer
Schwartz, Woods & Miller
Suite 300
1350 Connecticut Ave., N.W.
Washington, D.C. 20036

PORTA-PHONE
Frederick M. Joyce
Jill M. Lyon
JOYCE & JACOBS
2300 M St., N.W., Suite 130
Washington, D.C. 20037

CELPAGE, INC.
Frederick M. Joyce
Jill M. Lyon
JOYCE & JACOBS
2300 M St., N.W., Suite 130
Washington, D.C. 20037

ARCH COMMUNICATIONS GROUP, INC.
Robert H. Schwaninger, Jr.
Brown and Schwaninger
1835 K St., N.W., Suite 650
Washington, D.C. 20006

**INDUSTRIAL TELECOMMUNICATIONS
ASSN., INC.**

**Mark E. Crosby, President
Frederick J. Day, Director
1110 North Glebe Road
Suite 500
Arlington, VA 22201**

METROCALL, INC.

**Harry L. Brock, President
6677 Richmond Highway
Alexandria, VA 22306**